

REMARKS

In the above-identified Office Action, the Examiner has rejected claims 5-7, 13-15, 17, 19 and 23 under 35 U.S.C. §112 for being indefinite. Applicant has amended the claims, addressing each of the Examiner's concerns, and as such, the claims now are considered to be definite. With regard to claim 23, claim 23 has been canceled thereby obviating that rejection.

Claims 5-7, 13, 15, 17, 19 and 21 have been rejected as not being described in the specification. In large part, it would appear the Examiner is objecting to the use of the term "capable of". Applicant has amended the claims to delete this term, and as such, the claims are now considered to find full support in the specification.

Claims 5, 7, 13, 15, 17, 19 and 21 have been rejected because of a lack of enablement. Again, the rejection appears to hinge on the use of the term "capable of". As stated above, this term has been deleted from the claims, and as such, the claims are now considered to be enabled.

Claims 1, 2, 4, 6, 20 and 23 have been rejected as being anticipated by the patent to Hyldig-Nielsen et al. Further, claims 1-6, 8-18, 20 and 22-23 have been rejected as being anticipated by the European patent to Leong et al., and claims 3, 5, 8-18 and 22 have been rejected as being unpatentable over Hyldig-Nielsen et al. and further in view of Leong et al.

Claim 1 has been amended to more specifically state which outcome of the Gram-staining procedure is used to select the hybridisation protocol. It is submitted that neither US 5,888,733 (733) nor EP 0479 117 A1 (117) disclose the method of claim 1. The basis for the amendment may be found, for instance, on page 5, paragraph 23.

The referred to example 14 in column 29 of '733 does not explicitly state that it uses Gram-staining. The example mentions that samples were evaluated as positive on the basis of methylene blue staining and/or Gram-staining. It could very well be that all of the samples used in the hybridisation protocol were stained with methylene blue and that none of the samples used in the hybridisation protocol were Gram-stained. There is no direct correlation between the two techniques. Moreover, if a Gram-staining procedure was performed prior to the hybridisation, '733 still does not disclose the present invention. In the present invention, the hybridisation protocol, including the choice of probe to use, is dependent on whether the Gram-staining indicates the

the sample contains bacteria. Further, '733 does not disclose the invention in that no use is made of

the information on the type of staining. The hybridisation protocol is not selected on the basis of the outcome of the staining. The hybridisation protocol is fixed. It is the one disclosed in example 14. There is no alternative hybridisation protocol disclosed that is used based on the outcome of the Gram-staining.

The '117 patent does not deal with Gram-staining at all, rather information on the gram classification of certain bacteria, apparently obtained from databases or general knowledge, is used to design probes specific for either the group of Gram-positive or the group of Gram-negative bacteria. The classification of the bacterium is made depending on which probes hybridise to the nucleic acid ('117, page 2, lines 36-39). The disclosure in '117 is therefore entirely different from the method of the subject invention. In the subject invention, the outcome of a Gram-staining is used to select a hybridisation protocol. In '117, a hybridisation protocol is selected on the basis of the identification of the group or species desired. No Gram-staining is performed or implied in any part of the disclosure of '117.

It therefore is respectfully submitted that the claims are not anticipated by US 5,888,733 or EP 0479 117. Moreover, considering that in neither reference the result of a Gram-staining is used to select a hybridisation protocol, it is further submitted that also the combination of the mentioned references does not lead to the invention.

Applicant hereby requests reconsideration and re-examination thereof.

With the above amendments and the remarks, this application is considered ready for allowance, and Applicants earnestly solicit an early notice of same. If the Examiner believes that a telephone conference would expedite prosecution of the subject application, he is respectfully requested to call the undersigned attorney at the telephone number listed below.

Respectfully submitted,


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Dated: September 9, 2003

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